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Nos. 94-1664 , 94-8842

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

STACEY C. KOON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

LAURENCE M. POWELL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari Filed April 17, 1995
Certiorari Granted September 27, 1995

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* The opinions and orders of the District Court and the Court of Appeals relevant to the proceedings in this Court are printed in the appendix to each of the petitions for writ of certiorari and therefore have not been reproduced herein.

RELEVANT DOCKET ENTRIES FROM THE PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

8/4/92	1	INDICTMENT counts filed against Stacey C. Koon (1) count(s) 2, Laurence M. Powell (2) count(s) 1, Timothy E. Wind (3) count(s) 1, Theodore J. Briseno (4) count(s) 1 filed by AUSA Steven Clymer (cshl) [Entry date 08/07/92]
2/16/93	268	MINUTES: J/T 1st day. Voir dire exam of prospective jury pool commenced. Furth jury selection is cont to 2/2/93 [sic] at 8:30 am. C/R: Beverly Casares by Judge John G. Davies (mc) [Entry date 03/03/93]
2/25/93	274	MINUTES: J/T 8th day. Opening stmts made by govt and dfts 1, 2, and 4. [Entry date 3/3/93]
4/10/93	330	MINUTES: 39th day of jury trial cont to 4/11/93 at 12:00 p.m. Closeing [sic] argu made. Crt instru jury. Baliff/matron sworn. Closeing [sic] argu were made by atty Mr. Braun on behalf of dft Briseno, and rebuttal argu were made by govt's cnsl. C/R: B. Casares and C. Lee by Judge John G. Davies (dj) [Entry date 4/16/93]
4/17/93	342	VERDICT as to Stacey C Koon (dj) [Entry date 4/22/93]

4/17/93	343	VERDICT as to Laurence M. Powell (dj) [Entry date 4/22/93]
7/9/93	391	SENTENCING memorandum re Stacey C. Koon, Laurence M. Powell, plaintiff USA (dj) [Entry date 07/09/93]
7/29/93	402	ntc of filing under seal as to dft Laurence M. Powel (lj) [Entry date 08/03/93]l
7/30/93	405	Suppl sent memo subm on behalf of dft Stacey C. Koon (dj) [Entry date 08/03/93]
8/3/93	407	Ntc of under seal filing of reply to dft Koon's sent memo, plaintiff AUSA (dj) [Entry date 08/04/93]
8/4/93	408	Govt's notice of under seal filing of reply to dft Powell's sent memo

8/4/93	412	SENTENCING memorandum re Stacey C. Koon, Laurence M. Powell, Timothy E. Wind, Theodore J. Briseno (dj) [Entry date 08/05/93]
8/4/93	413	MINUTES: Sentencing hearing held, sentencing Stacey C. Koon (1) count(s) 2. It is the jdgmnt of the crt that the dft is h/b comm to the cust of BOP to be impris for a term of 30 mos on ct 2. Upon rel frm impris, the dft shall be plcd on supv rel for a term of 2 yrs under the fol terms and cond: 1. the dft shall comply w/the r & r of the PO and GO 318. Purs to sect 5E1.2(f) of the gudelines, all fines are wvd, incl the costs of impris and supv, as it is found that such sanc would plc an undue burden on the dft's dpts. Full rest has not been ord in view of the dft's limited assets and the fin need of dpts. It is fur ord that the dft shall pay to the U.S. a s/a of $50.00 prior to his self surr date. It is fur ord that the dft shall surr himself to the instit desig by the BOP on or befre noon, 9/27/93. In the absence of such designation, the dft shall report to the USM at 312 N. Spring, LA, CA on or before the same date and time. Ruling (s): the crt denied the dft's mot for bond pending appl. C/R: Beverly Casares by Judge John G. Davies (dj) [Entry date 08/06/93]

8/5/93	414	JUDGMENT and Committment as to dft Stacey C. Koon issued to US Marshall Judge John G. Davies. entered 8/6/93 (dj) [Entry date 8/6/93]
8/4/93	415	MINUTES: Sentencing hearing held, sentencing Laurence M. Powell (2) count(s) 1. It is the jdgmnt of the crt that the dft is h/b comm to the cust of BOP to be impris for a term of 30 mos on ct 1. Upon rel frm impris, the dft shall be plcd on supv rel for a term of 2 yrs under the fol terms and cond: 1. the dft shall comply w/the r & r of the PO and GO 318. Purs to sect 5E1.2(f) of the gudelines, all fines are wvd, incl the costs of impris and supv, as it is found that such sanc would plc an undue burden on the dft's dpts. Full rest has not been ord in view of the dft's limited assets and the fin need of dpts. It is fur ord that the dft shall pay to the U.S. a s/a of $50.00 prior to his self surr date. It is fur ord that the dft shall surr himself to the instit desig by the BOP on or befre noon, 9/27/93. In the absence of such designation, the dft shall report to the USM at 312 N. Spring, LA, CA on or before the same date and time. Ruling (s): the crt denied the dft's mot for bond pending appl. C/R: Beverly Casares by Judge John G. Davies (dj) [Entry date 08/06/93]

8/4/93	416	JUDGMENT and Committment as to dft Laurence M. Powell issued to US Marshall Judge John G. Davies. entered 8/6/93 (dj) [Entry date 8/6/93]
8/4/93	417	Dft Stacey C. Koon sent exh A (dj) [Entry date 8/6/93]
8/27/93	426	NOTICE of Cross-Appeal to 9th Circuit Court of Appeals by plaintiff USA as to defendant Stacey C. Koon [413-3] frm sentence only (18 USC 3742). Sent imposed: 30 mos impris and 2 yrs supvn rel. Bail status: Dft to surr on 9/27/93; mot for bail pend in 9th Cir. Ent in this actn on 8/6/93. (cc: all counsel) Fee Status: Bill-waived. Frms Gvn. TDO. (lj) [Entry date 08/30/93]
08/27/93	427	NOTICE of Cross-Appeal to 9th Circuit Court of Appeals by plaintiff USA as to defendant Laurence M. Powell, [415-3] frm sentence only (18 USC 3742). Sent imposed: 30 mos impris and 2 yrs supvn rel. Bail status: Dft to surr on 9/27/93; mot for bail pend in 9th Cir. Ent in this actn on 8/6/93. (cc: all counsel) Fee Status: Bill-waived. Frms Gvn. TDO. (lj) [Entry date 08/30/93]

RELEVANT DOCKET ENTRIES FROM THE PROCEEDINGS IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

8/30/93	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL
12/10/93	Filed original and 15 copies Stacey C. Koon first brief on cross-appeal, 34 pages and excerpts of record; served on 12/9/93 [93-50608, 93-50561] (ec) [93-50561 93-50608]
12/14/93	Filed Original and 15 copies Laurence M. Powell in 93-50562, in 93-50609 first brief on cross appeal, of 35 pages and excerpts of record in 3-vols; served on 12/10/93 [93-50562, 93-50609] (ec) [93-50562, 93-50609]
1/24/94	Received original and 15 copies USA 2nd cross-appeal brief, 83 pages; exerpts of record; I & II; Transcrips of Exhibits 91 & 92 (1-vol); Presentence Report; Govt's Suppl. Sealed Excerpts of Record (1-vol); served 1/20/94 deficient: ovsz. [93-50561, 93-50562, 93-50608, 93-50609](ec) [93-50561 93-50562 93-50608 93-50609]
1/24/94	Filed USA motion to file oversized consolidated brief and late brief (promo) [93-50561, 93-50562, 93-50608, 93-50609] served on 1/20/94 [2503405] (ec) [93-50561 93-50562 93-50608 93-50609]

1/24/94	Filed USA motion to file Transcript of Exhibits 91 and 92...and suppl. Excerpts under seal (promo) [93-50561, 93-50562, 93-50608, 93-50609] served on 1/20/94 [2503405] (ec) [93-50561 93-50562 93-50608 93-50609]
2/15/94	Filed order (Joseph T. SNEED,): the Govt's motion for Leave to file oversized second brief on cross-appeal is granted; the clk shall file the oversized late second brief. The government's motion for Leave to file the transcript of Exhibits 91 and 92 is denied. The transcripts of Exhibits 91 and 92 shall be lodged for such consideration as the panel that considers the merits of the case deems appropriate. The government's motion for leave to file vol. V of the suppl. excerpts of record under seal is granted. The clk shall place vol. V of the suppl. excerpts of record under seal. The videotapes (Exhibits 91 and 92) filed with the government's suppl. excerpts of record shall be returned. The parties are referred to Rule 11-4.2. The briefing schedule set in the court's Oct 26, 1993 order continues to govern. [2503405-1] [2503411-1] in 93-50561, 93-50562, 93-50608, 93-50609 [93 50561, 93-50562, 93-50608, 93-50609 [93-50561, 93-50562, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]
2/15/94	Filed original and 15 copies USA second brief on cross-appeal, 83 pages; excerpts of record 4-vols.; Presentence Report; and Vol. V suppl. excerts under seal, served on 1/20/94 [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]

2/15/94	Lodged Appellee's Transcripts of Exhibits 91 & 92 [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]
3/14/94	Filed Appellant Stacey C. Koon motion for permission to file oversized brief (panel) [93-50561, 93-50562, 93-50608, 93-50609] served on 3/11/94 [2533726] [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50562 93-50608 93-93-50609]
3/17/94	Received orig. 15 copies Laurence M. Powell in 93-50562's reply brief (Informal: no) of 30 pages; served on 3/14/94 deficient brief is oversized mtn/panel. [93-50561, 93-50562, 93-50608, 93-50609] (wp) [93-50561 93-50562 93-50562 93-50608 93-93-50609]
3/17/94	Filed Appellant Laurence M. Powell's motion for leave to file an oversized reply brief. (PANEL) [93-50562, 93-50561, 93-50608, 93-50609] served on 3/14/94 [2536283] [93-50562, 93-50561, 93-50608, 93-50609] (wp) [93-50561 93-50562 93-50562 93-50608 93-93-50609]
3/30/94	Received orig. 15 copies USA reply brief. 12 pages; served on 3/28/94. (panel) [93-50561, 93-50562, 93-50608, 93-50609[(ec) [93-50561 93-50562 93-50608 93-50609]

4/5/94	Filed order (for the Court:Deputy Clerk: gb) appellant's motion for leave to file an oversized reply brief is granted. [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]
4/5/94	Filed original and 15 copies Stacey C. Koon reply brief, 28 pages; served on 3/11/94 (panel) [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]
4/5/94	Filed original and 15 copies Laurence M. Powell reply brief, 30 pages; served on 3/14/94 [93-50562, 93-50561, 93-50608, 93-50609] (wp) [93-50561 93-50562 93-50608 93-50609]
5/2/94	ARGUED AND SUBMITTED TO James R. BROWNING, Betty B. FLETCHER, James M. Fitzgerald [93-50561, 93-50562, 93-50608, 93-50609] (dr) [93-50561 93-50562 93-50608 93-50609]
8/19/94	FILED OPINION: AFFIRMED IN PART; VACATED IN PART AND REMANDED FOR RESENTING (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. James R. BROWNING; Betty B. FLETCHER, author; James M. Fitzgerald.) FILED AND ENTERED JUDGMENT. [93-50561, 93-50562, 93-50608, 93-50609] (ck) [93-50561 93-50562 93-50608 93-50609]

9/7/94	Filed motion and deputy clerk order (Deputy Clerk: sa) granting motion for extension of time to file petition for rehearing w/suggestion for rehearing en banc to aplts Stacey Koon and Laurence Powell to and including 9/16/94. (Motion recvd 9/2/94) [93-50561, 93-50562, 93-50608, 93-50609] (sa) [93-50561 93-50562 93-50608 93-50609]
9/14/94	[2643779] Filed original and 40 copies Appellant Stacey C. Koon petition for rehearing with suggestion for rehearing en banc 15 p.pages, served on 9/13/94 [93-50561, 93-50608] (panel; active judges) (ec) [93-50561 93-50562 93-50608 93-50609]
10/19/94	Filed order (Betty B. FLETCHER,): the US is directed to respond to the defendants' suggestions for rehearing en banc. The court is particularly interested in response to the sentencing issues. The response shall be limited to 20 pages and shall be filed on or before Nov 7, 1994. [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]
11/8/94	Filed Appellee USA consolidated response to defendants' petition for enbanc rehearing, 20 pages, [2643779-1] in 93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]

1/12/95	Filed Order, Dissent and Concurrence FOR PUBLICATION (James R. BROWNING, Betty B. FLETCHER, James M. Fitzgerald,): All of the panel members have voted to deny the petitions for rehearing of both defendants. Judge Browning and Judge Fletcher have voted to reject the suggestions for rehearing en banc of both defendants and Judge Fitzgerald has so recommended. ...A judge of the court requested a vote as to whether to take the case en banc. A vote was taken. The request failed to secure the affirmative vote of a majority of the active non-recused members of the court. Judge Trott was recused. The petitions for rehearing of both defendants are denied and suggestion for rehearing en banc of both defendants are rejected. SR, cjj, dissenting, with whom HP, CEW, AK, JTN and MDH, cjj, join and with whom DFO, TGN and AK, cjj, join except as to part IV....(see order for complete text) [2643779-1] in 93-50561, 93-50608 [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50562 93-50608 93-50609]
2/2/95	Filed for Publication Order And Amended Dissent And Concurrence: (James R. BROWNING, Betty B. FLETCHER, James M. Fitzgerald): The dissent from the order denying rehearing en banc filed 1/12/95 is amended as follows...(For complete text see order) [93-50561, 93-50562, 93-50608, 93-50609] (gva) [93-50561 93-50562 93-50608 93-50609]
4/17/95	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 94-1664 filed on 4/10/95. [93-50561] (ah) [93-50561]

4/19/95 Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 94-8842 filed on 4/12/95. [93-50562, 93-50561] (crw) [93-50561 93-50562]

10/3/95 Received notice from Supreme Court, petition for certiorari GRANTED on 9/27/95. Supreme Court No. 94-1664 (crw) [93-50561, 93-50562, 93-50608, 93-50609] (ec) [93-50561 93-50608]

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff. v. STACY C. KOON, LAURENCE M. POWELL TIMOTHY E. WIND, THEODORE J. BRISENO, Defendants.	CASE NO. 92-686-JGD VERDICT

We the Jury in the above-entitled cause, find the defendant

STACEY C. KOON

GUILTY as charged in Count two of the Indictment
(Guilty or Not Guilty)

DATED: April 16, 1993

AT LOS ANGELES, CALIFORNIA

483
FOREPERSON OF THE JURY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff. v. STACY C. KOON, LAURENCE M. POWELL TIMOTHY E. WIND, THEODORE J. BRISENO, Defendants.	CASE NO. 92-686-JGD VERDICT

We the Jury in the above-entitled cause, find the defendant

LAURENCE M. POWELL

GUILTY as charged in Count one of the Indictment
(Guilty or Not Guilty)

DATED: April 16, 1993

AT LOS ANGELES, CALIFORNIA

483
FOREPERSON OF THE JURY